

Claimant contends Judge Fuller erred. Claimant argues that she also injured both upper extremities in the accident and, therefore, requests the Board to grant her benefits for a 24 percent whole body functional impairment.

Conversely, respondent and its insurance carrier contend the Decision should be affirmed.

The only issue that the Board must decide on this appeal is the extent of claimant's functional impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Decision should be affirmed. The Board affirms the Judge's finding that the greater weight of the evidence establishes that claimant injured her back in the December 13, 1997 accident and that she has sustained a five percent whole body functional impairment. The evidence fails to prove that claimant permanently injured her upper extremities in the accident.

The Board affirms the Judge's finding that the medical opinions provided by Dr. C. Reiff Brown, who treated claimant following the accident from February 16 to at least September 14, 1998, and the medical opinions provided by Dr. Dirk H. Alander, who was selected by the Judge to provide an independent medical evaluation, are the most persuasive regarding the nature and extent of claimant's injuries.

On at least three different occasions, Dr. Brown performed neurologic tests on claimant, which produced normal results indicating that claimant did not have radiculopathy into her legs. Based upon his knowledge of claimant's condition, Dr. Brown rated claimant as having a five percent whole body functional impairment due to the back injury. Dr. Brown's office notes do not reflect that claimant complained to him about her upper extremities at any time. Dr. Alander, who examined claimant on May 10, 2000, likewise rated claimant's whole body functional impairment for her back at five percent.

There are many inconsistencies in this claim including, among other things, how the accident occurred and when certain symptoms began. In the initial Application for Hearing filed with the Division of Workers Compensation in September 1998, claimant alleged a January 1998 accident and injuries to her back, right elbow, right shoulder, and right hand. But in October 1998, claimant filed a second application and alleged a December 13, 1997 accident and injuries to her back and both upper extremities. Further, when claimant first saw her medical expert witness, Dr. Pedro A. Murati, in August 1999, claimant was unable to provide the doctor with a date of accident for her hands and led the doctor to believe that her hand problems developed over a period of time doing repetitive work.

Claimant's symptoms and complaints have also been inconsistent. According to Dr. Murati's initial medical report, in August 1999 claimant was complaining of shooting pain into her legs, greater in the left leg. But Dr. Murati's October 1999 medical report states that claimant's low back pain was radiating into the right leg and no mention is made of the

left leg. Furthermore, Dr. Alander refers to inconsistencies that he found during his evaluation of claimant in May 2000 regarding claimant's upper extremities.

When considering the entire record, the Board concludes that claimant is entitled to receive a five percent permanent partial general disability for the back injury that she sustained on December 13, 1997.

The Board adopts the findings and conclusions of the Judge as set forth in the Decision to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Board affirms the December 22, 2000 Decision.

IT IS SO ORDERED.

Dated this ____ day of September 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Stanley R. Ausemus, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director